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SECRETARY OF STATE
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POLICY STATEMENT

Registration of Investment Advisers & Investment Adviser Representatives

This policy statement is written to address issues raised regarding the registration of investment adviser representatives and the provisions of the Mississippi Securities Act codified at Miss. Code Ann. §§75-71-101 *et seq.* (2000) hereafter referred to as the “Act.”

Certain entities have taken the position that agents of registered broker-dealers who perform advisory services are not required to register with the State of Mississippi. These entities cite §75-71-303(a) of the Act which reads as follows:

- (a) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless (1) he is so registered under this chapter; or (2) he is registered as a broker-dealer or an agent of a broker-dealer.

As the Division has pointed out before, the analysis of this issue does not end with this provision. Rather, the Act must be read as a whole and “effect given to every part, if it can be done without manifestly violating the intent of the legislature.”¹

Section 75-71-105(g) of the Act defines “Investment adviser” and lists nine categories excluded from this definition. The following comprise the nine categories in a broad sense:

- (1) investment adviser representatives
- (2) banks and savings associations
- (3) specific professionals such as lawyers, accountants, and teachers
- (4) broker-dealers and their agents **whose performance of advisory services is solely incidental to the conduct of his business and who receives no special compensation for those services** (emphasis added)
- (5) publishers
- (6) advisory services related to specific exempt securities
- (7) federally covered advisers

¹ State ex rel. Pair v. Burroughs, 487 So.2d 220, 227 (1986).

- (8) certain out-of-state advisers
- (9) such persons exempted from registration by the Secretary of State by rule or order.

Section 75-71-105(h) of the Act defines “Investment adviser representative” and generally includes persons who perform advisory services and who are employed by a registered investment adviser or who have a place of business in Mississippi and are employed by a federal covered adviser.

When you read all three provisions together, it becomes evident that the only broker-dealer agent that does not have to register is one who performs advisory services incidental to his regular business and is not specially compensated for such services. The Division maintains that the drafters of the Act did not intend to exclude or even exempt all broker-dealers and their agents because of their limiting the exclusion in §75-71-105(g)(4) to broker-dealers and their agents who only perform advisory services incidental to their brokerage services and who are not specially compensated for such advisory services. To read and apply §75-71-303(a) as a complete exemption of all broker-dealers and their agents would render §75-71-105(g)(4) meaningless in violation of the rules of statutory construction.

The statutory construction issue aside, it is not in the investing public’s interest to argue that a person’s status as the agent of a registered broker-dealer automatically qualifies him or her to perform investment advisory services. In Mississippi, as in many other states, there are separate educational and testing requirements for broker-dealer agents and investment adviser representatives.² It is the position of the Division and we believe that of the drafters as well that it is not in the best interest of Mississippi investors to assume that a registered broker-dealer agent is, by virtue of registration, competent to render investment advisory services.

In conclusion, the position of the Division remains unchanged as to the Act as a whole and more specifically to §75-71-303(a). It is well settled that it is within the province of the Division to interpret the statutes it is charged with enforcing and that “[g]reat deference is accorded to an administrative agency’s construction of its own rules and regulations and the statutes under which it operates.”³ The Division’s interpretation and application of this provision is consistent with the Act as a whole and serves the function of investor protection.



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² Mississippi Securities Act Rule 629 states in part that an a person applying to be registered as an investment adviser representative under the Act shall provide the Division with proof that he or she has obtained a passing score on one of the following examinations: (a) the Uniform Investment Adviser Law Examination (Series 65); or, (b) the General Securities Examination (Series 7) and the Uniform Combined State Law Examination (Series 66).

³ Melody Manor Convalescent Ctr. v. Mississippi Dept. of Health, 546 So.2d 972, 974 (1989).